

REMARKS

Applicants thank the Examiner for the courtesy extended to Applicants' attorney during the interview held July 19, 2004, in the above-identified application. During the interview, Applicants' attorney explained the presently-claimed invention and discussed the issues raised in the Office Action. The discussion is summarized and expanded upon below.

The provisional rejection of Claims 1-10 under the judicially created doctrine of obviousness-type double patenting over Claims 1-12 of copending Application Serial No. 09/926,385 (copending application), is respectfully traversed. Claim 1 of the present application requires that R<sup>3</sup> be lower alkyl which has one or more hydroxy or protected hydroxyl. The claims of the copending application, on the other hand, have been amended such that while inclusive of substituted lower alkyl as a possible constituent for R<sup>3</sup>, nevertheless, exclude hydroxyl and protected hydroxyl. There is no disclosure or suggestion in Claim 1 or any of the claims of the copending application to replace the possible substituents of the substituted lower alkyl groups for R<sup>3</sup> therein with hydroxy or protected hydroxy. Accordingly, it is respectfully requested that this rejection be withdrawn.

The rejection of Claims 8 and 10-12 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement thereof, is respectfully traversed. There can be no question that Applicants were in possession of the presently-claimed invention as of the filing date, given the original disclosure. The Examiner's rationale appears to be that no *in vivo* examples have been disclosed. In reply, there is no question that the *in vitro* results shown in the specification were obtained according to art-prescribed criteria. The burden is on the Examiner to provide evidence why persons of ordinary skill in the art would not accept such data as indicative of *in vivo* utility in the art of treating an infectious disease caused by a fungus.

For all the above reasons, it is respectfully requested that this rejection be withdrawn.

The rejection of Claims 6 and 8-10 under 35 U.S.C. § 112, second paragraph, is respectfully traversed. Indeed, the rejection is now moot in view of the above-discussed amendment. Accordingly, it is respectfully requested that the rejection be withdrawn.

The rejection of Claim 8 under 35 U.S.C. § 101 is now moot in view of the cancellation of said claim. Accordingly, it is respectfully requested that the rejection be withdrawn.

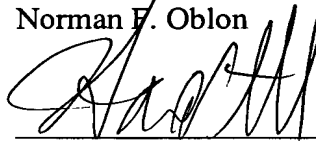
The objection to Claim 2 is now moot in view of the above-discussed amendment. Accordingly, it is respectfully requested that it be withdrawn.

Regarding paragraph 1 of the Office Action, the Examiner is respectfully requested to acknowledge consideration of related Application No. 10/469,233. The Examiner is also requested to acknowledge consideration of the List of Related Cases filed September 1, 2004.

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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